

MINUTES OF MEETING OF THE CORPORATIONS COMMITTEE
May 6, 2005

A regular meeting of the Corporations Committee of the Business Law Section of the State Bar of California was held at the Office of the California Department of Corporations in San Francisco on May 6, 2005. Attendance was as follows:

MEMBERS PRESENT:

Christopher A. Delfino
James F. Fotenos
Steve Harmon
Steven K. Hazen
Nina L. Hong
Brian A. Lebrecht
Brian D. McAllister
Deborah J. Ruosch
William R. Sawyers
David M. Serepca
Teri Shugart
Lemoine Skinner III
Jennifer Lynn Sostrin
Steven B. Stokdyk
Suzanne L. Weakley
Bertha Cortes Willner
Brian M. Wong
Russell J. Wood

MEMBERS ABSENT:

Curt C. Barwick
Bruce R. Deming
Matthew R. Gemello
Mark T. Hiraide
Victor Hsu
Stewart Laughlin McDowell

LIAISONS AND GUESTS PRESENT:

David S. Caplan, Executive Committee
Larry Doyle, State Bar of California*
Timothy L. Le Bas, California Department of Corporations*
Gayle Oshima, California Department of Corporations
John Webber, NASD Regulation, Inc.*

*Via Telephone

The minutes summarize discussions primarily in the order items were listed on the Agenda for the meeting previously circulated to members of the Committee, which is not necessarily the order in which the items were actually taken up at the meeting. The Committee did not take up those topics listed on the Agenda that are not described in these minutes.

I. ADMINISTRATIVE MATTERS

1. Opening Remarks and Announcements: The meeting was called to order by co-chairs Fotenos and McAllister at 9:30 a.m. Mr. Fotenos thanked the members of the Committee in attendance and informed them that a quorum was present. Mr. Fotenos welcomed back David Caplan after his recent surgery.

2. Minutes of February Meeting: Minutes for the meeting on April 8, 2005, were reviewed. On motion duly made and seconded, the minutes for the meeting on April 8, 2005, were unanimously approved with minor changes.

II. AGENCY AND LIAISONS' REPORTS

1. Department of Corporations: Mr. Le Bas announced that Ms. Oshima was leaving the DOC. He commended her for work over the years of her service. Mr. Le Bas then reported that DOC did not meet the deadline for submitting a bill to conform the Corporate Disclosure Act to federal law and that DOC was exploring other avenues for presenting a proposal. He then reported that the SEC was considering enhancing EDGAR with more information regarding states' issues and information of interest to state regulators. Mr. Le Bas then reported that electronic filing under Section 25102(f) will become effective on July 1st with a hardship exception for unreasonable burden or expense, pursuant to which a hardcopy may be filed. He reported that feedback has been very positive concerning the simplicity, ease of use, and time savings associated with electronic filings. He reported that DOC's electronic filing system for 25102(f) notices was being considered as a model by the SEC for Forms D.

Mr. McAllister asked about getting Corporate Disclosure Act amendments into a committee bill that is pending and Mr. Fotenos asked for the text in order to consider it.

Ms. Oshima announced that Wayne Strumpfer is now the new Acting Corporations Commissioner, and that Mr. Strumpfer was formerly Acting Deputy Commissioner. She then announced that she was going to work at the Department of Industrial Relations, and the members present thanked her for her service to DOC and the committee.

2. Corporate Law Departments: Mr. Sawyers reported that the Corporate Law Departments Committee was still not active.

3. Cyberspace Law: Mr. Serepca reported that he attended the last meeting of the Cyberspace Law Committee and that it was actively involved in its membership drive, staffing its hot issues panel for the State Bar annual meeting, tracking legislation, and organizing a conference.

4. Financial Institutions: Ms. Sostrin reported that she attended the last meeting of the Financial Institutions Committee, at which various honors and presentations had been made. She reported on pending cases of interest. The members present discussed partnering arrangements between companies and outside counsel and various fee arrangements.

5. Non-Profit Corporations: Mr. Delfino reported that he spoke with Brad Clark and that the Non-Profit Corporations Committee was not very active but that it wanted to be informed of relevant matters being considered by the Corporations Committee. Mr. McAllister reported on discussions with the Nonprofit Committee about SB 119. Mr. Fotenos reviewed certain audit committee requirements of the Nonprofit Integrity Act of 2004 (SB 1262).

6. UCC Committee: Ms. Hong reported that she attended the last meeting of the UCC Committee and that representatives were meeting with the ABA Deposit Account Control Agreement task force. She further reported that it had elected new members.

7. Executive Committee: Mr. Caplan reported that the Executive Committee had approved the proposed ALP for Section 710.

III. SUBCOMMITTEE REPORTS

1. Legislation: Mr. Stokdyk reported that he believes that AB 241 (merger certificate) has moved out of committee and on the Consent Calendar to be voted on shortly. He reported that he believes that SB 627 (usury) was also on the Consent Calendar. Mr. McAllister reported on modifications to SB 119 (Section 307(b) re-write), which is now pending to address (1) that, technically, there could be an approval with all directors being interested, (2) a procedural approach for abstention, and (3) that approval is invalid if disclosures are not conspicuous. Mr. Stokdyk reported that there was nothing new on spot bills. Mr. Doyle reported that Mr. Ackerman wants to continue to work for resolution on SB 627. Mr. Fotenos asked about spot bills or other bills pending on which DOC's Corporate Disclosure Act Amendments might be proposed. Mr. Doyle reported that no other bills seemed to impact corporations. The co-chairs thanked Mr. Doyle for joining the meeting.

2. Communications/Website: Ms. Sostrin reported that updating the website continues and that the subcommittee is trying to modify the extranet to mirror that of the Franchise Law Committee. Mr. Hazen proposed including on the website a list of past committee chairs and the members present discussed the proposal, as well as asked various questions that were addressed by Ms. Sostrin. She asked for email proposals from members as to information and links that would be of interest. She discussed an idea for a "practitioner's corner" portion of the website where interested practitioners could find information concerning pending legislation and current projects of the committee. Ms. Weakley suggested including electronic filing requirements and Mr. Skinner proposed including annotated venture capital financing forms.

3. Education/Publications: Ms. Shugart reported that she and Mr. Skinner would be presenting a 1-hour program on the Handbook for Incorporating a Business in California and that Mr. Stokdyk would be presenting a program on recent developments in California corporate law. Mr. Stokdyk asked for a volunteer to join him in presenting the program and Mr. Serepca volunteered.

IV. 2004-2005 AGENDA: STATUS

1. Handbook for Incorporating a Business in California: Ms. Shugart reported that she was working on a cumulative redlined version and asked members with comments to send only marked portions. Mr. Fotenos reported that he was researching the question of copyrights related to the 1989 Guide to Organizing a California Corporation.

2. Opinion Report: Mr. Fotenos reported that the committee had published and circulated the exposure draft and received 2 comment letters from recognized authorities. He reviewed two substantive issues covered by his memorandum to the committee that was made available on the extranet prior to the meeting, including the coverage of financial covenants in a no-violation-of-material-agreements opinion, discussed in Part A of the memo. The members present discussed extensively the proposed language of the provisions of the Report that address the issues. Mr. Fotenos committed that, concerning the issue identified in Part A of the memo involving financial covenants, he would revise the language of the Report to reflect the comments expressed at the meeting. The members present discussed the language proposed in Part B of the memo, concerning the extent of investigation supporting a no-violation-of-court-orders opinion and litigation confirmation. Upon motion duly made and seconded the committee unanimously approved accepting the change to the language of the Report as proposed in Part B of the memo.

Mr. Hazen then presented his comments on the most recent draft.

Mr. Fotenos committed to circulating a memo with an update to the language related to Part A of the memo and gave members one more week to comment on the revised draft. He reported that he plans to submit the revised draft to the Executive Committee prior to the next meeting.

3. ALPs: Ms. Ruosch reviewed a draft ALP for technical amendments to Section 191 (intrastate business definition conformity with LPs, LLCs and GPs). Mr. Delfino reviewed a draft ALP for an amendment to Section 600(b) to change an obsolete reference to the Revenue and Taxation Code, and Mr. Stokdyk reviewed a draft ALP for technical corrections to Sections 114, 603(a), 1301(b), and 1501(a). He then reviewed comments received from Keith Bishop. On motion duly made and seconded, the three draft technical ALPs were unanimously approved.

Mr. Fotenos then reiterated that the ALP for amendment of Section 710 was approved by the Executive Committee.

4. Uniform Securities Act Report: Mr. Serepca reported that the working group had divided up the USA provisions for analysis.

5. Close Corporation Model Act Adoption: Mr. Serepca reported that the working group was meeting after the committee meeting.

6. BLN Article re SOX and State Law Conflicts: Mr. Wood reported that a draft was complete.

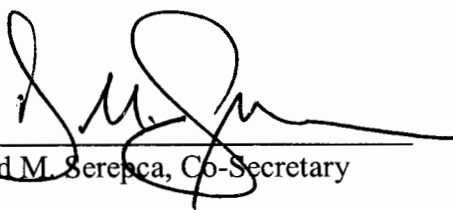
7. NVCA Model Forms Commentary/Annotations: Mr. Skinner reported that he was looking for volunteers to review the indemnification agreement, right of first refusal agreement and opinion letter. Ms. Willner, Mr. Harmon and Mr. Sawyers volunteered.

V. OTHER BUSINESS

Mr. McAllister called for other business.

Mr. Harmon reported on the enactment of AB 2167 (unlicensed broker-dealers) effective January 1st, which creates a cause of action for a purchaser from an unlicensed broker dealer for rescission or damages, and other changes. Mr. Harmon then reported on the ABA Task force on Private Placement Broker-Dealers, including its mission, recent reports and a proposal to create a separate registration system for various private placement intermediaries engaging in limited activities, referred to as private placement broker-dealers ("PPBDs") and M&A broker-dealers.

There being no other business, the meeting was adjourned at approximately 12:30 p.m.



David M. Serepca, Co-Secretary